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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,654	01/27/2004	Suk H. Cho	09143-018002	1195

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EXAMINER

FLOOD, MICHELE C

ART UNIT	PAPER NUMBER
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1655

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/765,654	Applicant(s) CHO, SUK H.	
	Examiner Michele Flood	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 24-28 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/27/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgement is made of the receipt and entry of the amendment filed on January 27, 2004 with the cancellation of Claims 1-23.

Claims 24-28 are under examination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Gooberman (AW).

Applicant claims a method for reducing pain, inflammation, stiffness or discomfort in a mammal comprising administering a dietary supplement to the mammal in an amount effective to reduce pain, inflammation, stiffness or discomfort, wherein the dietary supplement comprises an aminosaccharide, a ginger component and an enzyme. Applicant further claims the method of claim 24, wherein said aminosaccharide is glucosamine. Applicant further claims the method of claim 25, wherein the mammal receives a daily dose of the ginger oil, the daily dose being between 2 mg/kg and 20 mg/kg of body weight of the glucosamine.

The referenced product, 'Ultimate Joint Repair Formula', was found at http://thehealthstore.net/en-us/p_2.html. In an interview with Dr. Gooberman on March

25, 2003, Gooberman stated that he formulated the referenced product and that it has been in public use for four to five years for use by humans. The 'Ultimate Joint Repair Formula' taught by Gooberman comprises 1500 mg of glucosamine sulfate and 420 mg of a proprietary blend of the following ingredients: bromelain (80+ GDU); *Boswellia serrata* extract (40%); tumeric and ginger. Gooberman further taught that the referenced product is used in the treatment of arthritic conditions for pain, inflammation and joint repair. Gooberman teaches, "In severe joint repair situations: Start with three capsules taken three times per day for one month, then taper off and seek level at which you feel continued relief."

The reference anticipates the claimed subject matter.

Claims 24-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Craig Kisciras (AX).

Applicant's claimed invention of Claims 24-26 was set forth above. Applicant further claims the method of claim 24, wherein said ginger component is ginger oil. Applicant further claims the method of claim 27, wherein the mammal receives a daily dose of the ginger oil, the daily dose being between 25 mg/kg and 50 mg/kg of body weight of the ginger oil.

The referenced product, 'NutriFlex for Dogs and Cats' (tablets), was found at <http://www.rxvitamins.com/pets/nutriflex.asp>. In an interview with Craig Kisciras, Vice President of RxVitamins™, on March 26, 2003, Kisciras stated that he developed the referenced product and that it has been in public use since 1997. Three chewable

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tablets of 'NutriFlex for Dogs and Cats' taught by Kirciras provide 250 mg of glucosamine sulfate, 75 mg of ginger (standardized *Zingiber officinale* supplying 4% volatile oils), and 75 mg of bromelain (standardized proteolytic enzyme supplying 1200 GDU per gram). Kirciras recommends the administration of three of the ChewTabs for every 30-60 pounds of mammalian body weight two times a day. Kirciras does not expressly teach that the method for administering the referenced product reduces pain, inflammation or discomfort in a mammal. However, the method taught by Kirciras comprises the administration of the same ingredients in the same amount as instantly claimed by Applicant. Therefore, the functional beneficial effects are inherent to the method taught by Kirciras.

The reference anticipates the claimed subject matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goberman (AW) in view of Sharma et al. (U).

Applicant's claimed invention was set forth above.

The teachings of Goberman are set forth above. Goberman teaches the instantly claimed method except for ginger oil. However, it would have been obvious to

one of ordinary skill in the art to add an effective amount of ginger oil to the method taught by Gooberman to provide the instantly claimed method of treatment because at the time the invention was made Sharma taught a method comprising the administration of effective amounts of ginger oil was beneficial in the treatment of inflammatory disease conditions. At the time the invention was made, one of ordinary skill in the art would have been motivated and one would have had a reasonable expectation of success to add ginger oil to the method taught by Gooberman to provide the instantly claimed method of treatment because Sharma taught that the administration of effective amounts of ginger oil to a mammal provide potent anti-inflammatory and/or anti-rheumatic activity.

Moreover, it would have been obvious to one of ordinary skill in the art at the time the invention was made to ginger oil in the making of the claimed method because it is well known that its *prima facie* obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose. The idea for combining them flows logically from their having been used individually in the prior art. *In re Pinten*, 459 F. 2d 1053, 173 USPQ 801 (CCPA 1972); *In re Susi*, 58 CCPA 1074, 1079-80; 440 F.2d 442, 445; 169 USPQ 423, 426 (1971); *In re Crockett*, 47 CCPA 1018, 1020-21; 279 F.2d 274, 276-277; 126 USPQ 186, 188 (1960). Thus, at the time the invention was one of ordinary skill in the art would have been motivated and one would have had a reasonable expectation of success to add the ginger oil taught by Sharma to the method taught by Gooberman to provide the claimed method because the claimed invention is

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no more than the combining of well known ingredients used in well known methods for reducing pain, inflammation, stiffness or discomfort in a mammal.

Accordingly, the claimed invention was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of evidence to the contrary.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Flood whose telephone number is 571-272-0964. The examiner can normally be reached on 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MICHELE FLOOD
PRIMARY EXAMINER

Michele Flood
Primary Examiner
Art Unit 1655

MCF
October 31, 2005